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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

ASIF MEHEDI, Individually and on Behalf of
All Others Similarly Situated,

Plaintiff,

v.

VIEW, INC. f/k/a CF FINANCE
ACQUISITION CORP. II, RAO MULPURI,
VIDUL PRAKASH, HOWARD W. LUTNICK,
PAUL PION, ALICE CHAN, ANSHU JAIN,
ROBERT J. HOCHBERG, CHARLOTTE S.
BLECHMAN, CF FINANCE HOLDINGS II,
LLC, CANTOR FITZGERALD & CO.,
CANTOR FITZGERALD, L.P., AND CF
GROUP MANAGEMENT, INC.,

Defendants.

Case No. 5:21-cv-06374-BLF

CLASS ACTION

**DEFENDANT VIDUL PRAKASH'S
NOTICE OF JOINDER AND MOTION
TO DISMISS LEAD PLAINTIFF'S
SECOND AMENDED CLASS ACTION
COMPLAINT PURSUANT TO FED. R.
CIV. P. 12(b)(6); MEMORANDUM OF
POINTS AND AUTHORITIES**

Judge: Hon. Beth Labson Freeman
Date: March 14, 2024
Time: 9:00 a.m.
Ctrm: 3

NOTICE OF JOINDER AND MOTION TO DISMISS

TO ALL PARTIES AND THEIR COUNSEL: Please take notice that on March 14, 2024, at 9:00 a.m., or at such other time as the matter may be heard, in the courtroom of the Honorable Beth Labson Freeman, in Courtroom 3 of the U.S. District Court, 280 South 1st Street, San Jose, CA 95113, Defendant Vidul Prakash (“Prakash”) joins in Sections III(A), III(B), and III(D) of the Motion to Dismiss and Strike Allegations filed by Defendants View, Inc., f/k/a CF Finance Acquisition Corp. II (“View”) and Rao Mulpuri (“Mulpuri”), as well as the request for judicial notice contained therein (the “View Motion”). All abbreviations used herein are defined in the View Motion. Defendant Prakash separately moves to dismiss the Second Amended Complaint (ECF No. 175) (“SAC”) with prejudice pursuant to Fed. R. Civ. P. 12(b)(6), given Plaintiff’s failure to state a claim against him in compliance with Rule 8 and Rule 9(b) of the Federal Rules of Civil Procedure or the PSLRA’s “exacting pleading standards.” *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 990 (9th Cir. 2009), as amended (Feb. 10, 2009).

Prakash’s motion is based on this notice of joinder and motion to dismiss, the attached Memorandum of Points and Authorities, and upon such other arguments as may be presented before the Court takes this matter under submission.

STATEMENT OF ISSUES TO BE DECIDED

1. Whether the Court should dismiss Plaintiff’s Section 10(b) claim against Prakash given Plaintiff’s failure to plead (a) facts giving rise to a “strong inference” of Prakash’s scienter; and (b) loss causation.

2. Whether the Court should dismiss Plaintiff’s Section 14(a) claim against Prakash given Plaintiff’s failure to plead (a) that Prakash acted with negligence; (b) that Prakash solicited any proxy; and (c) causation.

3. Whether the Court should dismiss Plaintiff’s Section 20(a) claim against Prakash given Plaintiff’s failure to plead (a) a predicate violation; and (b) Prakash’s “control” over others.

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1 I. INTRODUCTION

2 Plaintiff's new allegations undermine its claims against Prakash. Plaintiff attempts to plead
3 Prakash's scienter based on the SEC Complaint and the announcement of the Audit Committee's
4 conclusions. But, following their investigations, neither the SEC nor the Audit Committee even
5 suggested that Prakash intentionally engaged in improper accounting. To the contrary, both assert
6 that Prakash was (at most) negligent. Plaintiff does not attempt to allege that Prakash had any
7 motive to defraud investors, and the Court has already rejected Plaintiff's remaining scienter
8 allegations. Plaintiff fails to state a claim against Prakash under Section 10(b).

9 Plaintiff's new Section 14(a) claim against Prakash fares no better. Plaintiff fails to allege
10 with particularity that Prakash acted negligently by following the recommendations of View's
11 accounting and finance personnel. And Plaintiff fails to plead the required "substantial connection"
12 between the use of Prakash's name in CFII's filings and the solicitation of any proxy.

13 For those reasons, and the many additional grounds set forth in Sections III(A), III(B), and
14 III(D) of View's Motion, the SAC should be dismissed with prejudice.

15 II. BACKGROUND

16 Prakash served as View's CFO from March 2019 through November 2021. (*See* Berry
17 Decl. Ex. 14 at ¶ 17.) Prakash has an MBA degree and decades of prior operational experience at
18 a range of companies. (*Id.*) Plaintiff does not allege any further details about Prakash's
19 professional experience or qualifications. Plaintiff does not and cannot allege that Prakash is a
20 CPA.

21 On November 8, 2021, Prakash resigned as View's CFO. (¶ 28.) The next day, View
22 announced that its Audit Committee had conducted an investigation and concluded that Prakash
23 and others had "negligently failed" to properly record the Company's warranty accruals and had
24 "intentionally failed" to disclose certain (unidentified) information to the Company's board and
25 auditors regarding the "applicable costs incurred and expected to be incurred in connection with
26 the warranty-related obligations." (¶ 84.) Plaintiff does not allege that the Audit Committee
27 investigation concluded that Prakash knew the Company's accounting was improper.

28 After View restated its financials for fiscal years 2019 – 2020, Plaintiff filed this securities

1 class action asserting claims against Prakash under Sections 10(b) and 20(a) of the Exchange Act.
 2 (*See* Complaint (ECF No. 1).) On May 22, 2023, the Court dismissed those claims for failure to
 3 plead a strong inference of scienter. Allegations that Prakash knew about quality issues requiring
 4 a warranty accrual failed to plead that he knew the warranty accrual was improperly calculated.
 5 (Order at 30.) The Court also rejected Plaintiff’s remaining scienter allegations and found that
 6 Plaintiff’s allegations failed to plead scienter when considered holistically. (*See* Order at 28-33.)

7 In parallel to these proceedings, the SEC conducted an investigation. In connection with
 8 the investigation, View produced “documents and witnesses (including both informal interviews
 9 and subpoenaed testimony) and detailed explanations and summaries of specific factual issues.”
 10 (¶¶ 19 n.1, 62 n.2.) On July 3, 2023, the SEC filed a complaint against Prakash asserting claims
 11 under Section 17(a)(3) of the Securities Act and Section 14(a) and Rule 13b2-1 of the Exchange
 12 Act. (Berry Decl. Ex. 14 at ¶¶ 76-84.) Notably, following its investigation, the SEC asserted only
 13 negligence-based claims against Prakash and did not allege intentional misconduct.

14 On August 21, 2023, Plaintiff filed the SAC, copying allegations from the SEC Complaint,
 15 adding a claim against Prakash under Section 14(a) of the Exchange Act, and re-asserting claims
 16 against Prakash under Section 10(b) and 20(a). (*See* ¶¶ 182, 199-205, 256-266.)

17 **III. ARGUMENT**

18 **A. Plaintiff’s Section 10(b) Claim Fails.**

19 **1. The SAC Fails to Plead a Strong Inference of Fraudulent Intent.**

20 Plaintiff previously failed to plead a strong inference that Prakash knew View’s warranty
 21 accrual accounting was improper. (Order at 28-33.) In response to the Order, Plaintiff added two
 22 categories of allegations to the SAC: (1) those directly copied from the SEC Complaint; and
 23 (2) View’s announcement that its Audit Committee concluded that Prakash had “negligently failed”
 24 to “properly record” the warranty accrual. Those allegations undermine any inference of scienter.

25 **The SEC Complaint.** As Plaintiff admits, the vast majority of the SAC’s new allegations
 26 are “based on the pleadings and other filings in the SEC Action.” (¶¶ 19 n.1, 62 n.2.) Plaintiff
 27 attempts to bolster the SAC’s allegations by emphasizing that the SEC Complaint resulted from an
 28 investigation during which View provided documents, witnesses, and detailed factual analysis.

(*Id.*) But the SEC’s investigation culminated in claims against Prakash that allege only negligence. (*See* Berry Decl. Ex. 14 at ¶¶ 76-84.); *see also* Aaron v. SEC, 446 U.S. 680, 697 (1980) (Section 17(a)(3) claims require only negligence). Plaintiff cannot support scienter based on unproven allegations that are copied and pasted from the SEC Complaint. (*See* View Mot. at 5-8.) But if the Court does consider those allegations, the only plausible inference to be drawn from them is that the SEC’s investigation did not uncover a basis for alleging fraud.

The Audit Committee Investigation. Plaintiff’s other new allegations, regarding View’s Audit Committee investigation, likewise weigh against an inference of scienter. As those allegations show, the Audit Committee did not find that Prakash intentionally engaged in improper accounting. To the contrary, View announced the Audit Committee’s finding that Prakash “*negligently* failed” to “properly record the liabilities for warranty-related obligations and cost of revenue.” (¶ 84 (emphasis added).)

At the same time, View also announced that Prakash “intentionally failed” to provide “certain information” to View’s Board and auditors regarding “the applicable costs incurred and expected to be incurred” in connection with the defect. (*Id.*) Those vague allegations raise more questions than they answer. What information did Prakash allegedly fail to disclose? How, if at all, would this information have altered the Company’s or its auditor’s view of the accounting treatment? Did Prakash know that View’s accounting treatment would be improper without this information? Plaintiff does not say. Nor does the SAC allege any facts demonstrating that Prakash “knowingly and recklessly engaged in an improper accounting practice,” as required. *Lloyd v. CVB Fin. Corp.*, 811 F.3d 1200, 1207 (9th Cir. 2016) (citing *Metzler Inv. GMBH v. Corinthian Colls., Inc.*, 540 F.3d 1049, 1068-69 (9th Cir. 2008)).

Holistic Analysis. Considered holistically, the inference of scienter is not as compelling as the nonculpable inferences here. (Order at 33); *see also* Webb v. SolarCity Corp., 884 F.3d. 844, 850 (9th Cir. 2018). Plaintiff offers no explanation for why Prakash would risk his reputation and livelihood to engage in accounting improprieties and defraud View’s investors. Without such a motive, Plaintiff “face[s] a substantial hurdle in establishing scienter.” *Prodanova v. H.C. Wainwright & Co., LLC*, 993 F.3d 1097, 1103 (9th Cir. 2021).

1 The SAC fails to clear that hurdle. Rather, the SAC’s allegations undermine any scienter
 2 inference. Plaintiff alleges that View’s decision to cover Installation Costs, was “widely known,”
 3 including by the Finance department (§§ 190-91). To determine the appropriate accounting,
 4 Prakash assembled a team of experts from View’s accounting and finance groups to advise on the
 5 warranty accrual. (§ 209.) As the SAC alleges, Prakash followed that team’s recommendation with
 6 respect to the accounting relevant here. (§ 211.) Not only that, but to the extent Prakash himself
 7 was uncertain about View’s policy on Installation Costs—as the SAC suggests he may have been
 8 at times—he repeatedly sought to confirm his understanding with relevant members of View’s
 9 management. (*See, e.g.*, §§ 213, 227-28 (alleging that Prakash asked members of View
 10 management, throughout the Class Period, whether View was continuing to cover Installation
 11 Costs).) What’s more, View restated its warranty accrual to correct *both* an understatement and a
 12 “partially offsetting” *overestimate*, which had inflated the accrual. (§ 47.) Taken together, the
 13 more compelling inference is an accounting error that occurred *despite* Prakash’s best efforts, not
 14 as a result of any alleged misconduct.

15 **2. The SAC Fails to Plead Loss Causation.**

16 Prakash joins in View’s arguments that Plaintiff once again fails to plead loss causation
 17 under any theory. (View Mot. at 3-5.) That is another independent ground for dismissal.

18 **B. Plaintiff’s Section 14(a) Claim Fails.**

19 **1. The SAC Fails to Allege Prakash Acted with the Requisite Negligence.**

20 Under Section 14(a), Plaintiff is required to “make individualized allegations of
 21 negligence,” including by alleging “the duty that [Prakash] owed to the Plaintiff and how that duty
 22 was breached.” (Order at 24); *see also In re McKesson HBOC, Inc. Sec. Litig.*, 126 F. Supp. 2d
 23 1248, 1263 (N.D. Cal. 2000) (applying a negligence standard to Rule 14a-9 claims). Where, as
 24 here, “the Section 14 claim . . . is based on the same course of conduct as the Section 10(b) claims,”
 25 both the heightened pleading standard of Rule 9(b) and the particularity requirements of
 26 Section 4(b)(1) of the PSLRA apply. (*See* Order at 23); *see also In re Finjan Holdings, Inc. Sec.*
 27 *Litig.*, 58 F.4th 1048, 1057-1059 (9th Cir. 2023) (assessing Section 14 claim pleading standard
 28 where the claim is “grounded in fraud”). The SAC fails to plead Prakash’s negligence.

1 Plaintiff does not allege that Prakash himself performed an erroneous analysis of the
 2 warranty accrual or that he was even involved in the complex accounting judgments necessary to
 3 calculate the accrual. Rather, Prakash followed the recommendation of a team of accounting and
 4 finance personnel assembled *by him* specifically to determine the proper warranty accrual for costs
 5 associated with the defect. (¶ 209.) Nor does Plaintiff allege that the accounting and finance
 6 personnel who prepared this recommendation were unaware of the Company’s practice of covering
 7 installation costs. In fact, Plaintiff makes clear that View’s continuing payment of installation costs
 8 was “widely known” and “available from numerous sources.” (¶¶ 190-91.)

9 Instead, Plaintiff asserts that Prakash was negligent in “fail[ing] to ensure” that this team of
 10 personnel “considered View’s decision and actual practice of covering Installation Costs when it
 11 prepared its recommendation.” (¶ 210.) But an allegation of error, even if material, does not plead
 12 a claim for negligence absent a failure to exercise due care. *See McKesson*, 126 F. Supp. 2d at 1265
 13 (“[A] negligence standard protects [defendants] who make immaterial mistakes or who have made
 14 material mistakes despite exercising due care.”). Nor can Prakash be liable for errors in View’s
 15 accounting solely as a result of his former position as CFO. *See Mendoza v. HF Foods Grp. Inc.*,
 16 2021 WL 3772850, at *11 (C.D. Cal. Aug. 25, 2021) (dismissing Section 14(a) claims and rejecting
 17 boilerplate references to corporate executive duties”). The SAC raises no reasonable inference that
 18 View’s accounting error resulted from Prakash’s failure to exercise due care.

19 The findings of View’s Audit Committee likewise fail to satisfy Plaintiff’s pleading burden.
 20 (See ¶ 84.) The SAC’s mere incorporation of the Audit Committee’s legal conclusions, without
 21 alleging any underlying facts on which those conclusions are based, is insufficient. Because the
 22 SAC fails to address why or how Prakash should have detected and corrected the misstated accrual,
 23 against the advice of accounting and finance personnel, Plaintiff’s Section 14(a) claim fails.

24 **2. The SAC Fails to Allege that Prakash Solicited Proxies.**

25 Plaintiff additionally fails to plead that Prakash “solicit[ed] or . . . permitt[ed] the use of his
 26 name to solicit any proxy” as required by Section 14(a) and Rule 14a-9.

27 Plaintiff does not allege any facts suggesting that Prakash solicited any proxies directly.
 28 Nor does Plaintiff allege that Prakash had control, including drafting or signing, over the contents

1 of any proxy statement. Plaintiff alleges only that Prakash's name appeared more than 20 times in
 2 the S-4 and Prospectus (as required by SEC regulations), and again in an investor presentation, and
 3 that each document included his biography. (§ 28.) But the "mere presence" of his name in these
 4 materials is not enough. *See* 15 U.S.C. § 78n(a); *Yamamoto v. Omiya*, 564 F.2d 1319, 1323 (9th
 5 Cir. 1977). Instead, Plaintiff must allege a "substantial connection" between the use of Prakash's
 6 name in these filings and the solicitation effort. *Yamamoto*, 564 F.2d at 1323 (citation omitted).

7 Plaintiff cannot do so. The Form S-4 is 676 pages long and the Prospectus 595 pages.
 8 (Berry Decl. Ex. 2; Ex. 4.) Nothing about Prakash's short biography (which was one of more than
 9 a dozen included in both filings and takes up only half a slide, out of 52, in the investor presentation)
 10 suggests a substantial connection to the solicitation effort. (Berry Decl. Ex. 1 at 5; Ex. 2 at 234;
 11 Ex. 4 at 241.) Courts routinely dismiss Section 14(a) claims where, as here, there are no facts
 12 showing a substantial connection between the use of a defendant's name and the solicitation effort.
 13 *See e.g., Mendell v. Greenberg*, 612 F. Supp. 1543, 1552 (S.D.N.Y. 1985); *Kelley v. Rambus, Inc.*,
 14 2008 WL 5170598, at *5 (N.D. Cal. Dec. 9, 2008); *In re Bank of Am. Corp. ERISA Litig.*, 757 F.
 15 Supp. 2d 260, 294–95 (S.D.N.Y. 2010).

16 Because Plaintiff fails to allege either the requisite negligence or solicitation under
 17 Section 14(a) and Rule 14a-9, the claim should be dismissed.

18 **3. The SAC Fails to Plead Causation.**

19 Prakash joins in View's arguments that Plaintiff fails to plead causation, as required to state
 20 a Section 14(a) claim. (View Mot. at 8-10.)

21 **C. Plaintiff's Section 20(a) Claim Fails.**

22 Plaintiff's failure to plead a primary violation under either Section 10(b) or Section 14(a) is
 23 fatal to Plaintiff's Section 20(a) claim. (Order at 42.)

24 Additionally, the SAC fails to plead that Prakash "exercised actual power" over View. *See*
 25 *In re NVIDIA Corp. Sec. Litig.*, 768 F.3d 1046, 1052 (9th Cir. 2014). Plaintiff alleges only that
 26 Prakash signed certain public filings (§§ 104, 112, 116, 117, 125-26) and that "because of [his]
 27 position[] at the Company, Prakash possessed the power and authority to control the contents of
 28 the Company's reports to the SEC, press releases and presentations to . . . the market." (§ 29.)

1 These sparse allegations are insufficient to establish control person liability. *See Howard v. Everex*
 2 *Sys., Inc.*, 228 F.3d 1057, 1067 n.13 (9th Cir. 2000) (allegations that a defendant “reviewed and
 3 approved” financial statements does not “rise to a level of supervision or participation sufficient
 4 for a § 20(a) violation”); *Luna v. Marvell Tech. Grp.*, 2017 WL 2171273, at *6 (N.D. Cal. May 17,
 5 2017) (serving “as CFO and [] signing the public disclosures at issue herein are simply insufficient
 6 to establish their liability as control persons under the law.”).

7 **D. Plaintiff’s Improper Attempt to Add New Parties Should be Rejected.**

8 Prakash joins in View’s arguments that the SAC improperly purports to assert claims on
 9 behalf of a new named plaintiff, David Sherman. The Court should reject Sherman’s improper
 10 attempt to join the case. (View Mot. at 12-13.)

11 **IV. CONCLUSION**

12 For the foregoing reasons, the claims against Prakash should be dismissed with prejudice.

14 Dated: October 2, 2023

MORRISON & FOERSTER LLP

16 By: /s/ Ryan M. Keats
 17 Ryan M. Keats

18 Attorneys for Defendant Vidul Prakash